

§ 275.203A-1

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adviser direct, control, and coordinate the activities of the investment adviser.

(4) *Private fund assets* means the investment adviser's assets under management attributable to a qualifying private fund.

(5) *Qualifying private fund* means any private fund that is not registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-8) and has not elected to be treated as a business development company pursuant to section 54 of that Act (15 U.S.C. 80a-53). For purposes of this section, an investment adviser may treat as a private fund an issuer that qualifies for an exclusion from the definition of an "investment company," as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a-3), in addition to those provided by section 3(c)(1) or 3(c)(7) of that Act (15 U.S.C. 80a-3(c)(1) or 15 U.S.C. 80a-3(c)(7)), provided that the investment adviser treats the issuer as a private fund under the Act (15 U.S.C. 80b) and the rules thereunder for all purposes.

(6) *Related person* has the same meaning as in § 275.206(4)-2(d)(7).

(7) *United States* has the same meaning as in § 230.902(1) of this chapter.

(8) *United States person* means any person that is a U.S. person as defined in § 230.902(k) of this chapter, except that any discretionary account or similar account that is held for the benefit of a United States person by a dealer or other professional fiduciary is a United States person if the dealer or professional fiduciary is a related person of the investment adviser relying on this section and is not organized, incorporated, or (if an individual) resident in the United States.

NOTE TO PARAGRAPH (d)(8): A client will not be considered a United States person if the client was not a United States person at the time of becoming a client.

[76 FR 39703, July 6, 2011]

§ 275.203A-1 Eligibility for SEC registration; Switching to or from SEC registration.

(a) *Eligibility for SEC registration of mid-sized investment advisers.* If you are an investment adviser described in section 203A(a)(2)(B) of the Act (15 U.S.C. 80b-3a(a)(2)(B)):

(1) *Threshold for SEC registration and registration buffer.* You may, but are not required to register with the Commission if you have assets under management of at least \$100,000,000 but less than \$110,000,000, and you need not withdraw your registration unless you have less than \$90,000,000 of assets under management.

(2) *Exceptions.* This paragraph (a) does not apply if:

(i) You are an investment adviser to an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a) or to a company which has elected to be a business development company pursuant to section 54 of the Investment Company Act of 1940 (15 U.S.C. 80a-54), and has not withdrawn the election; or

(ii) You are eligible for an exemption described in § 275.203A-2 of this chapter.

(b) *Switching to or from SEC registration—(1) State-registered advisers—switching to SEC registration.* If you are registered with a state securities authority, you must apply for registration with the Commission within 90 days of filing an annual updating amendment to your Form ADV reporting that you are eligible for SEC registration and are not relying on an exemption from registration under sections 203(l) or 203(m) of the Act (15 U.S.C. 80b-3(l), (m)).

(2) *SEC-registered advisers—switching to State registration.* If you are registered with the Commission and file an annual updating amendment to your Form ADV reporting that you are not eligible for SEC registration and are not relying on an exemption from registration under sections 203(l) or 203(m) of the Act (15 U.S.C. 80b-3(l), (m)), you must file Form ADV-W (17 CFR 279.2) to withdraw your SEC registration within 180 days of your fiscal year end (unless you then are eligible for SEC registration). During this period while you are registered with both the Commission and one or more state securities authorities, the Act and applicable State law will apply to your advisory activities.

[76 FR 43011, July 19, 2011]